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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/526,683

11/06/2005

Yves Desarzens

PUS-P001-034B-N

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51184 7590 08/19/2008
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EXAMINER

GEORGE, TARA R

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

08/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/526,683	Applicant(s) DESARZENS ET AL.	
	Examiner TARA R. GEORGE	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-7,9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolford (US Pub. 2003/0181916 A1) in view of Dye (US Pub. 2003/0229356 A1).

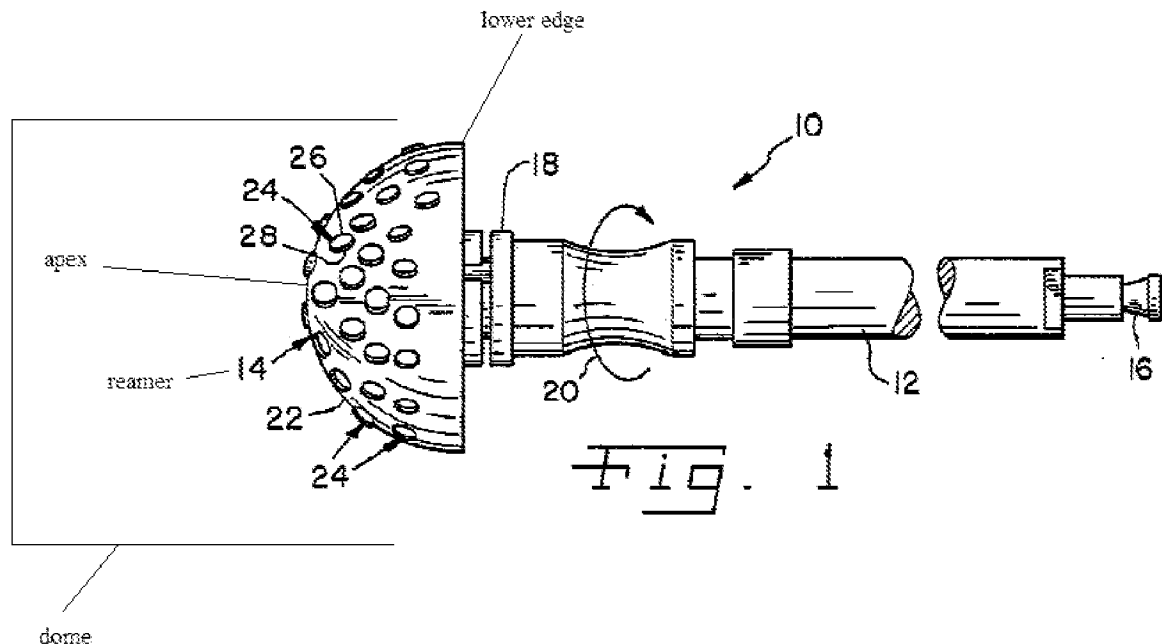
Wolford discloses a reamer comprising a substantially hemispherical, hollow dome extending to a lower edge and defining an equatorial plane and an apex as shown in figure 1 below. As for claim 4, Wolford discloses a plurality of sections 30 of the dome are removed, and as for claim 5, said removed sections are equally spaced about the equator of the dome as shown in figure 1 below. Wolford also discloses, with regard to claims 9,11 and 12 respectively, the interface structure is a portion of at least one cross bar (see para. 20); wherein the interface structure is fixedly attached to the inside of the dome by a single cross bar having a centering boss (see para. 20); and wherein the interface structure is fixed to the inside of the dome by a single cross bar having a central centering hole (see para. 20). With regard to claim 10, Wolford discloses at least one cross bar and it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the interface structure of Wolford having a plurality of cross bars, since it has been held that mere duplication of

Art Unit: 3733

the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Wolford discloses the claimed invention except for a reamer spindle interface structure fixedly attached to the inside of the dome so as to completely and substantially inset the interface structure inwardly from the edge and within the dome as per claim 1, wherein the interface structure is attached via at least one internal junction which is entirely recessed within the dome above the equatorial plane as stated in claim 2, wherein the interface structure is fixedly attached to the inside of the dome via a junction located approximately at the apex of the dome, as per claim 6, or substantially along the latitudinal plane of the interface structure, as per claim 7, and an angled reamer spindle as per claim 13. Dye discloses an interface structure 16 fixedly attached to the inside of the dome so as to completely and substantially inset the interface structure inwardly from the edge and within the dome as per claim 1 (see para. 66, para. 69 and para. 77), wherein the interface structure is attached via at least one internal junction which is entirely recessed within the dome above the equatorial plane as stated in claim 2 (see para. 77), wherein the interface structure is fixedly attached to the inside of the dome via a junction located approximately at the apex of the dome, as per claim 6 (see para. 77), or substantially along the latitudinal plane of the interface structure, as per claim 7 (see para. 77), and an angled spindle 22 as per claim 13, in order to provide an assembly that provides minimum invasiveness of orthopedic surgery (see para. 18). It would have been obvious to one skilled in the art at the time the invention was made to construct the reamer of Wolford with the reamer spindle

assembly in view of Dye in order to provide an assembly that provides minimum invasiveness of orthopedic surgery.



Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolford (US Pub. 2003/0181916 A1) in view of Dye (US Pub. 2003/0229356 A1) as applied to claim 1 above, and further in view of Wolford et al. (US Pub. 2006/0189994).

The combination of Wolford and Dye discloses the claimed invention except for a dome having at least one substantial section removed so as to reduce a static insertion profile of the reamer, as per claim 3, and wherein the section removed renders the dome asymmetrical, as per claim 8. Wolford et al. discloses a dome having at least one substantial section removed so as to reduce a static insertion profile of the reamer (see para. 6) and wherein the section removed renders the dome asymmetrical as shown in figure 1, in order to minimize the invasiveness of surgery (see para. 8). It would have

been obvious to one skilled in the art at the time the invention was made to construct the reamer of the combination of Wolford in view of Dye with a dome having at least one substantial section removed so as to reduce a static insertion profile of the reamer and wherein the section removed renders the dome asymmetrical in view of Wolford et al., in order to provide an assembly that provides minimum invasiveness of orthopedic surgery.

Response to Arguments

The affidavit filed on 4/28/2008 under 37 CFR 1.131 has been considered but is ineffective to overcome the Wolford reference. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Wolford reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). Note that the Wolford reference has an effective date of March 22, 2002.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARA R. GEORGE whose telephone number is (571)272-3402. The examiner can normally be reached on M-F from 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. R. G./

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733